

Burns, Marlene

From: Alford, Patrick
Sent: Wednesday, June 05, 2013 10:48 AM
To: Burns, Marlene
Subject: FW: Lot Merger Language

From: Larry Tucker [<mailto:Tucker@GTPCenters.com>]
Sent: Tuesday, June 04, 2013 4:54 PM
To: Alford, Patrick
Cc: Wisneski, Brenda; Mulvihill, Leonie
Subject: Lot Merger Language

Patrick,

I like the approach you have taken to Lot Merger Finding No. 5, but would tweak the language as follows:

"5. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:

- a. Whether development of the merged lots could significantly deviate from the pattern of development of nearby lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties;
- b. Whether the merged lots would be consistent with the character or general orientation of nearby lots; or
- c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the Zoning District."

I would hope we accomplish a few things by replacing Finding No. 5 with the above language:

1. Actual development of merged lots should not be an issue in a lot merger decision since the development of the lots is not really before the decision-makers; rather it is the potential for merged lots to be developed in a fashion that is incompatible with nearby lots that should be the focus. One often does not know how lots that are proposed to be merged will be developed, so the Section should address lot mergers and not their development. Therefore language that compares merged lots with "surrounding adjoining or adjacent development" is comparing apples (a lot merger with no development defined) with oranges (what has been developed nearby). The Ocean Blvd. merger decision focused on the house being contemplated by the owner, even though technically that house was not before the Commission. The Commission even went so far as to tweak the details of the house, generating a no vote from the two members who did not consider the house in reaching their decision: The Chairman (who focused on the incompatibility of the lot with its surrounds) and yours truly (who felt the findings could be made).
2. Using the word "nearby" gives flexibility to what the merged lot is compared to. It can be as narrow or as expansive as decision-makers decide based upon the facts that are presented. The key word "surrounding" used in the existing code sounds like what encircles the merged lots, but that can be too narrow and could lead to a circumstance where lots in blocks where there has been no merger remain as such, whereas lots in the next block where there have been mergers are treated differently due to the fortuity of having had a lot merger in that block. The word "adjoining", even though defined in the code, likewise sounds too narrow.
3. I substituted the word "unreasonable" for the word "material" since having a big house come in next to an adjacent home could be considered a material detriment, but not necessarily unreasonable.

Look forward to our discussion on Thursday!

Larry